IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1810 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANANDKUMAR PANNALAL JAIN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1810 of 1994

MS AMITA S SHAH for Petitioner No. 1

MR AP BHATT A.G.P. for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 15/09/2004

ORAL JUDGEMENT

1.0. The petitioner has by way of this petition challenged the orders at annexure-F, G & H whereby the respondent authorities have cancelled the license of the

petitioner, and further have confiscated the amount paid by the petitioner.

2.0. The short facts as they emerge from the record of the petition are that the respondents have issued license to the petitioner for selling kerosene on retail basis. It is the case of the petitioner that on 16th March, 1993, the respondent authorities have raided the shop and have seized 50 liters of kerosene. In view of that respondent no. 3 issued show cause notice for breach of condition no. 22, 23 and 24 of the Gujarat Essential Articles (licencing Control and Stock declaration) order, 1981. The petitioner replied to the said show cause notice vide his reply dated 20th April, 1993 alongwith the statement of two witnesses. It is the case of the petitioner that respondent no. 3 without considering the statement of the witnesses vide order dated 22nd April, 1993 ordered to cancel his license and confiscate the amount paid by the petitioner.

2.1. Being aggrieved by the order of respondent no.3, the petitioner preferred appeal before respondent no.2. Respondent no.2, after appreciating the material produced before it, dismissed the appeal and confirmed the order passed by respondent no.3. The petitioner therefore preferred Revision Application No. 119 of 1993 before respondent no.1. Respondent no. 1 vide order dated 18th January, 1994 dismissed the said application and confirmed the order passed by respondent nos. 2 and 3. Hence, the petitioner has filed the present petition.

3.0. Ms. Shah learned advocate appearing for the petitioner contended that the inspection was done on 16th March, 1993 and the authorities have seized the entire goods. She further contended that though statements of two witnesses were produced, the same were not considered by the respondent authorities and extreme penalty of cancellation of license and confiscation of amount was imposed upon the petitioner.

2.1. Ms. Shah further contended that in case of other similarly situated persons, the authorities have imposed some minor penalty of confiscation of goods and suspension of license for 90 days. Therefore, in the present case also, same terms may be imposed upon the petitioner.

2.2. As against that Mr. Bhatt learned A.G.P. appearing for the respondents contended that this Court shall not exercise its jurisdiction after concurrent findings recorded by the authorities. He further

submitted that the this Court may not interfere with the decision of the respondent authorities and the petition may be rejected.

3.0. I have considered the arguments of both the sides and have perused the evidence on record. Admittedly, the statements of two witnesses dated 10th April, 1993 were not considered by the respondent authorities. Apart from that, I am of the opinion that the penalty of cancellation of license and confiscation of amount imposed upon the petitioner is very harsh, especially in view of the fact that in similar cases (vide order dated 30th June, 1993 at page 38 to the petition) the respondent authorities had imposed penalty of only suspension of license for 90 days and confiscation of goods in question.

3.1. Looking to the peculiar facts and circumstances of the case, I find force in the submission of the learned advocate for the petitioner. Under the circumstances it would be appropriate to remand the matter to the respondent authorities to decide the issue afresh after taking into consideration the aforesaid aspects.

4.2. In the premises aforesaid, the petition is partly allowed. The orders at annexure-F, G & H passed by the respondent authorities are quashed and set aside. The matter is remanded to the respondent authorities for fresh decision with a direction that the respondent authorities shall consider the statement of two witnesses and shall consider imposing minor penalty of suspension of license or confiscation of goods in question as is done in similar cases. However, it is stated that the question of suspension of license will not arise inasmuch as the petitioner has not done any business right from the year 1994. Therefore, the only question which is required to be considered is with regard to confiscation of the amount paid by the petitioner. The respondent authorities shall decide the said issue afresh within two months from the date of the receipt of the order of this Court.

4.3 Further, if the license of the petitioner is not returned to the petitioner or if it is already cancelled, then the license of the petitioner shall be renewed or shall issue a fresh license. However, the authorities shall pass appropriate orders, after considering the evidence produced by both the sides.

4.4 Rule is made absolute to the aforesaid extent

with no order as to costs.

[K.S. JHAVERI, J.]

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